

STATE OF NORTH CAROLINA  
COUNTY OF ROBESON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
93 CRS 15291-15293

STATE OF NORTH CAROLINA

v.

MOTION FOR RECONSIDERATION

DANIEL ANDRE GREEN,  
Defendant.

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NOW COMES the Defendant, Daniel Andre Green, pursuant to N.C. Gen. Stat. § 15A-1411 *et. seq.*, and, through undersigned counsel, respectfully moves this Court to reconsider its denial of Defendant's claims raised in his Motion for Appropriate Relief and supplemental filings, as well as two new claims raised herein.

Disputed questions of fact have been raised through the Defendant's filings requiring an evidentiary hearing be held before the Court can deny relief. Denying Defendant's claims without an evidentiary hearing and findings of fact is contrary to precedent and will result in a fundamental miscarriage of justice within the meaning of N.C. Gen. Stat. § 15A-1419(b)(2). In support of this motion, the Defendant shows the following:

**PROCEDURAL BACKGROUND**

1. Procedural history documented in prior motions is incorporated herein as if fully pled.
2. On August 3, 2018, a motions hearing was held in Lee County, the Honorable C. Winston Gilchrist presiding (Judge Gilchrist). At that time, the Court stated the pleadings in the case would be closed once Mr. Green filed his Fifth Supplement to First Amended Motion for Appropriate Relief (Fifth Supplement) and the State had filed its response.
3. On September 5, 2018, Mr. Green filed a Motion for Post-Conviction Discovery.
4. On September 13, 2018, the State filed the State's Response to Defendant's Motion for Post-Conviction Discovery.
5. On October 4, 2018, Mr. Green's Fifth Supplement was filed with the Court.
6. On October 12, 2018, Judge Gilchrist held a hearing on Mr. Green's Motion for Post-Conviction Discovery. Although the motion was initially granted, during the hearing, Mr. Green's motion was withdrawn. Judge Gilchrist ordered the State to file its response to Mr. Green's Fifth Supplement within forty-five days.
7. On October 15, 2018, Mr. Green filed a Notice of Correction to a Prior Filing and a Response to State's Motion for 90 Days to File Answer and Response to State's Motion to Continue Hearing.

8. On November 26, 2018, the State filed the State's Answer to Fifth Supplement to First Amended Motion for Appropriate Relief, the State's Renewed Motion to Deny Motions for Appropriate Relief on the Pleadings, and the State's Motion to Strike Inadmissible Evidence.
9. On December 5, 2019, oral arguments for all claims were heard by Judge Gilchrist.
10. On March 6, 2019, Judge Gilchrist informed the parties that Mr. Green's pleadings were denied in their entirety and a signed order to that effect would be forthcoming.

**RECENT INTERVIEW OF LARRY DEMERY**

11. On December 31, 2018, undersigned interviewed Mr. Green's co-defendant, and the sole alleged eyewitness against Mr. Green, Mr. Larry Demery. (Ex. 1 ¶ 7)
12. During the interview, as memorialized in the attached sworn affidavit, Mr. Demery stated that his trial testimony was not truthful. (Ex. 1 ¶ 8)
13. Mr. Demery told undersigned that the reason his statements kept changing was because State kept telling him "they needed more." (Ex. 1 ¶ 9)
14. Mr. Demery stated that the State told him they wanted his story to place him close to the victim's car when the shooting occurred and, specifically, that he saw Mr. Green shoot the victim. (Ex. 1 ¶ 10)
15. The State also wanted Mr. Demery to testify that he helped move the body because they didn't believe Mr. Green could have done so on his own. (Ex. 1 ¶ 11)
16. Mr. Demery told undersigned that he felt coached by law enforcement to testify falsely against Mr. Green. (Ex. 1 ¶ 12)
17. Mr. Demery's recantation is supported by documentation of his evolving story.
  - a. Mr. Demery's first statements to law enforcement occurred on August 15, 1993. There was both an audio recording and an unrecorded statement made on that date. In both statements he denies being present for the murder. (2015 First AMAR Ex. 42 at 56, Ex. 42 at 6-7)<sup>1</sup>
  - b. On January 11, 1994, Mr. Demery was interviewed by Mr. Brant Clifton of *The Robesonian* newspaper and he again denies being present during the murder. (Fifth Supplement Ex. 43 at 1-2)
  - c. On April 27, 1995, Mr. Demery signed his plea agreement. (2015 First AMAR Ex. 57)

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<sup>1</sup> All of the documents supporting Mr. Demery's recantation have been included in the prior filings referenced.

- d. On May 2, 1995, Mr. Demery gave another statement, now saying he was sixty feet away from the car and running towards his own car when James Jordan was shot. (Fifth Supplement Ex. 44 at 6)
  - e. On May 8, 1995, he “corrects” his May 2, 1995 statement and says he was next to the car when Mr. Jordan was shot and about two feet from Mr. Green. (Fifth Supplement Ex. 44 at 48) This statement is consistent with his trial testimony, but is a far cry from his statement at the time of his plea.
18. Most importantly, during the December 31, 2019 interview, Mr. Demery stated that if he is called to testify at a hearing, he will testify that significant portions of his testimony during Mr. Green’s trial was not truthful, that he never saw Mr. Green shoot the victim, and that the State coached him to give details it wanted included in his testimony. (See Ex. 1 ¶ 13)

#### **FAILURE TO FILE THESE CLAIMS PREVIOUSLY**

19. The undersigned did not previously file another amendment to Mr. Green’s MAR documenting Mr. Demery’s recantation because the Court stated that no new factual allegations could be raised.
20. During the August 3, 2018 motions hearing, the Court stated the pleadings in the case would be closed once Mr. Green filed his Fifth Supplement to First Amended Motion for Appropriate Relief (Fifth Supplement) and the State had a chance to file its response. (Ex. 2 at 18)<sup>2</sup>
- a. As indicated above, the supplement was filed on October 4, 2018 and the State’s response was filed on November 26, 2018.
21. Judge Gilchrist went on to explain that he was “not foreclosing [the defense] from filing another brief, if you want to do that. I’m just talking about factual allegations and pleadings . . .” (Ex. 2 at 19)
22. Based upon Judge Gilchrist’s direction, the pleadings were closed to new factual allegations on November 26, 2018—just over one month prior to Mr. Demery’s recantation.
23. Had an evidentiary hearing been granted on Mr. Green’s other claims, Mr. Demery would have been a witness at the hearing and undersigned would have questioned him regarding the veracity of his trial testimony.

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<sup>2</sup> Only the relevant pages of the hearing transcript are included as an exhibit. The entire transcript is available upon request.

## CLAIMS FOR RELIEF

### A. NEWLY-DISCOVERED RECANTATION EVIDENCE OF LARRY DEMERY WARRANTS RELIEF PURSUANT TO N.C. GEN. STAT. § 15A-1415(C).

24. Newly discovered evidence establishes that the primary witness against Mr. Green did not testify truthfully about critical facts, thereby depriving Mr. Green of a fair trial.
25. A defendant can file a Motion for Appropriate Relief based upon newly discovered evidence if he meets the requirements set out in N.C. Gen. Stat. § 15A-1415(c), which states:

. . . [A] defendant at any time after the verdict may by a motion for appropriate relief, raise the ground that evidence is available which was unknown or unavailable to the defendant at the time of trial, which could not with due diligence have been discovered or made available at that time, including recanted testimony, and which has a direct and material bearing upon the defendant's [. . .] guilt or innocence.

26. In the present case, the primary witness against Mr. Green at his trial, Mr. Larry Demery, has recanted his testimony that he saw Mr. Green shoot the victim. He has also stated that his false testimony was coached by the State.
27. A newly discovered evidence claim based upon a witness recantation has a different standard for a defendant to meet than traditional newly discovered evidence claims. Recanted testimony is considered "a special type of newly discovered evidence." *State v. Britt*, 320 N.C. 705, 713 (1987). "In recantation cases, what is sought is a new trial *without* untruthful testimony rather than one that merely adds different material." *Id.* (citing *State v. Caldwell*, 322 N.W. 2d 574, 585 (Minn. 1982)). Under North Carolina law, the following must be established for a defendant to be granted relief based on recanted testimony:

- 1) the court is reasonably well satisfied that the testimony given by a material witness is false, and
- 2) there is a reasonable possibility that, had the false testimony not been admitted, a different result would have been reached at the trial.

*Id.*

28. In the instant case, had Mr. Demery testified that he did not see Mr. Green shoot the victim and that the State coached him to change his story and falsely testify there is significantly more than "a reasonable possibility that . . . a different result would have been reached at the trial." *Id.*

**B. THE STATE INTENTIONALLY DECEIVED THE COURT AND THE JURY BY PRESENTING EVIDENCE IT KNEW TO BE FALSE IN VIOLATION OF MR. GREEN'S CONSTITUTIONAL RIGHT TO DUE PROCESS.**

29. The deliberate deception of a court and jurors by the presentation of evidence known to be false violates the Fourteenth Amendment. *United States v. Agurs*, 427 U.S. 97 (1976); *Napue v. Illinois*, 360 U.S. 264 (1959). A conviction "must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." *United States v. Bagley*, 473 U.S. 667, 679 (1985) (quoting *Agurs*, 427 U.S. at 103).
30. The Supreme Court of North Carolina has held that "[w]hen a defendant shows that testimony was in fact false, material, and knowingly and intentionally used by the State to obtain his conviction, he is entitled to a new trial." *State v. Sanders*, 327 N.C. 319, 336, 395 S.E.2d 412, 423 (1990) (internal quotation marks omitted).
31. Mr. Demery's recantation states that not only did the State know his testimony was false, but the State intentionally solicited the false testimony.
32. Mr. Demery's recantation is strongly supported by the documented changes in his statements from the time of his arrest through Mr. Green's trial.
33. The jury was given the false impression that Mr. Demery saw Mr. Green shoot the victim.

**CONCLUSION**

34. "[T]he ultimate question that must be addressed in determining whether a motion for appropriate relief should be summarily denied is whether the information contained in the record and presented in the defendant's motion for appropriate relief would suffice, if believed, to support an award for relief." *State v. Jackson*, 220 N.C. App. 1, 6, 727 S.E.2d 322, 328 (2012); *State v. Martin*, 244 N.C. App. 727, 735, 781 S.E.2d 339, 344 (2016).
35. If there is a factual dispute, as there is in this case, Mr. Green is entitled to an evidentiary hearing to put forth evidence supporting his claims.
36. As "the facts disclosed in [Mr. Green's] motion for appropriate relief reveal issues of fact which could not be resolved solely on the basis of [the record]," an evidentiary hearing should be allowed so Mr. Green can "produce evidence to substantiate his allegations" raised in his filings. *State v. Hardison*, 126 N.C. App. 52, 57, 483 S.E.2d 459, 462 (1997); *State v. Martin*, 244 N.C. App. 727, 738, 781 S.E.2d 339, 346 (2016).

**PRAYER FOR RELIEF**

**WHEREFORE**, Defendant respectfully prays unto the Court the following:

1. Issue an order granting an evidentiary hearing on all questions of fact asserted through this and prior filings.

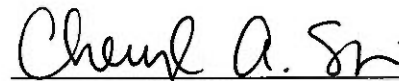
Respectfully submitted the 6th of March, 2019.

*Attorneys for Daniel Andre Green:*

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**Certificate of Service**

I hereby certify that, via the United States Postal Service, I caused to be served a copy of the above **Motion for Reconsideration** upon the Attorney General's Office:

Mr. Jonathan P. Babb  
Ms. Danielle Marquis Elder  
Special Deputy Attorney General  
P.O. Box 629  
Raleigh, NC 27602

This the 6th day of March, 2019.



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STATE OF NORTH CAROLINA  
COUNTY OF ROBESON

IN THE GENERAL COURT OF JUSTICE  
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93 CRS 15291-15293

STATE OF NORTH CAROLINA )

v. )

DANIEL ANDRE GREEN, )

Defendant. )

AFFIDAVIT

NOW COMES the Affiant, Christine C. Mumma, who, being duly sworn, attests to the following:

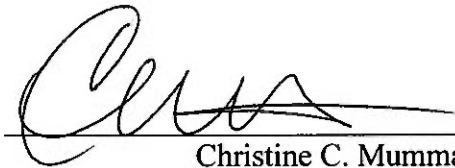
1. My name is Christine Mumma. I am attorney admitted to the practice of law in North Carolina.
2. I represent Mr. Daniel Green in the above-captioned case.
3. On February 20, 2017, I visited Mr. Green's co-defendant, Mr. Larry Demery, at Scotland Correctional in Laurinburg, North Carolina and attempted to interview him.
4. At that time, Mr. Demery refused to speak to me in any detail about Mr. Green's case.
5. I corresponded with Mr. Demery in late 2018 and requested that he add me to his visitation list so I could come speak with him about Mr. Green's case.
6. On December 10, 2018, Mr. Demery sent me a letter and agreed to allow me to visit him a second time. He thereafter added me to his visitation list.
7. On December 31, 2018, I interviewed Mr. Demery at Scotland Correctional. During this interview, he was willing to speak with me about Mr. Green's case.
8. Mr. Demery stated that his testimony at Mr. Green's trial was not truthful.
9. Mr. Demery stated that the reason his statements before Mr. Green's trial kept changing was because the State told him they need more.
10. Mr. Demery stated that the State told him that they needed him to say he was close to the car and that he saw Mr. Green shoot the victim.
11. The State also told Mr. Demery they didn't believe Mr. Green could have moved the body by himself, so the State needed Mr. Demery there to help.
12. Mr. Demery stated that he felt coached by law enforcement to lie at trial.



13. Mr. Demery told me that if he was called to testify at a hearing, he would testify to the statements above.
14. I did not file an amendment to Mr. Green's MAR documenting Mr. Demery's recantation because the Court instructed the parties that no new factual allegations could be raised.
15. I was confident an evidentiary hearing would be granted in Mr. Green's case based on the number of strong claims raised that were supported by evidence that raised serious questions of fact, and I was concerned that any filing would further delay Mr. Green's freedom.
16. I knew that Mr. Demery would be a witness at any future hearing and I was prepared to ask him questions on the stand regarding his changing statements at the time of trial and the truthfulness of his testimony.
17. To the best of my knowledge and belief, all of the information included in this affidavit is true, complete, and made in good faith.

Further, Affiant says not.

This the 6th day of March, 2019.



Christine C. Mumma  
N.C. State Bar No. 26103

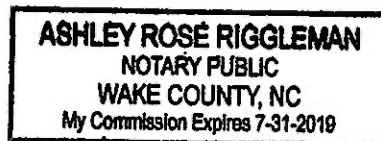
I, the undersigned, a Notary Public for said county and state, do hereby certify that Christine Mumma personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn to and subscribed before me this 6th day of March, 2019.

  
Notary Public

Printed Name: Ashley Rose Riggleman

My commission expires: 7/31/2019



STATE OF NORTH CAROLINA  
LEE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
93 CRS 15291-15293

STATE OF NORTH CAROLINA  
Plaintiff,

TRANSCRIPT, Volume I OF I

v.

DANIEL GREEN,  
Defendant.

[Pages 1-27]

Friday, August 3, 2018

\* \* \* \* \*

Lee County Criminal Superior Court

August 3, 2018 Session

The Honorable C. Winston Gilchrist, Judge Presiding

Motions hearing

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Representing the Defendant

1 some sort of schedule for closing the pleadings in the case. So  
2 why don't we talk about that a little bit. I mean, it sounds to  
3 me like the State doesn't feel it can be ready to argue before  
4 Labor Day. I'm likely to be out of commission in September and  
5 October, so we're probably realistically looking at a November  
6 hearing date, anyway, and certainly that would facilitate what  
7 you are asking for, Ms. Mumma. So how much time would you need  
8 if an amended MAR was going to be filed to do that?

9 MS. MUMMA: Thirty days, your Honor.

10 THE COURT: All right. State want to be heard about that?  
11 Obviously, if I allow that, I'll allow the State a similar amount  
12 of time to file any response.

13 MR. BABB: Thank you, your Honor.

14 THE COURT: You satisfied with that?

15 MR. BABB: As long as it's more than 30 days before any  
16 hearing and I have 30 days to respond before any hearing, State  
17 has no objection how your Honor proceeds.

18 THE COURT: Okay. All right. Very well. I will grant the  
19 defendant's motion to file an amendment to the MAR if it is  
20 deemed necessary to do so. That should be done within 30 days of  
21 today's date. State shall have 30 days from service of the  
22 amended motion upon which to file a response. All right. I  
23 would propose to close the pleadings in the case once the State  
24 has filed its response. Is there any objection to that from the  
25 State?

1 MR. BABB: No, sir.

2 THE COURT: From the defense?

3 MS. MUMMA: No, your Honor.

4 THE COURT: Okay. Very well. Pleadings will be closed once  
5 the State has filed its response to any amended MAR. In any  
6 event, the pleadings shall be closed not later than October 15.  
7 Now, I'm not talking about briefs, although the issues in the  
8 case have already been briefed pretty extensively, and I'm  
9 familiar with those briefs. I'm not foreclosing you from filing  
10 another brief, if you want to do that. I'm just talking about  
11 factual allegations and pleadings, those deadlines will apply as  
12 I've indicated. Okay. In terms of setting a hearing date, then,  
13 what is counsel's availability for November 27? That's a  
14 Tuesday.

15 MR. BABB: Your Honor, is it okay if I --

16 THE COURT: Absolutely.

17 MR. BABB: Your Honor said the 27th?

18 THE COURT: Yes, sir.

19 MR. BABB: Available, your Honor.

20 MR. MANCE: Your Honor, I'm not available the 20th through  
21 the 29th of November.

22 THE COURT: All right. What about the week of December 3rd?

23 MR. MANCE: Yes, your Honor.

24 THE COURT: So counsel for both sides will know, what I  
25 would prefer to do, if it is possible, and I'm not requiring it.